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August 6, 2012

TO: Each Supervisor

FROM: Mitchell H. Katz, M.D., Director *mmh*

SUBJECT: **IMPACTS OF CALIFORNIA'S MEDICAL INJURY
COMPENSATION REFORM ACT (MICRA) AND SIMILAR
LAWS (Agenda Item #6, August 7, 2012)**

Research suggests that MICRA, and laws in other states which place limits on non-economic damages in malpractice awards, have affected malpractice cases and health care in several ways. Overall, we believe that MICRA is beneficial to patients and access to care.

Slower growth of malpractice premium rates – Although changes in malpractice premium rates occur due to a wide variety of factors, several studies indicate that caps on non-economic damages have a mitigating effect on rate increases. For example, a 2003 General Accounting Office (GAO) report found that in 2001-2002, average premium rates rose 10% in states with non-economic damage caps of \$250,000, compared with a 29% increase in states with limited reforms.¹ Another study found that between 1995 and 2001, malpractice premiums were 17% lower in states capping malpractice payments.²

Preserve availability of physicians – Because limitations on malpractice damages appear to limit malpractice premiums, it is believed that physicians, particularly those in high-risk specialties, are more likely to stay in practice in states with damage award caps. One study in the Journal of the American Medical Association found that states adopting "direct reforms," such as non-economic damage caps, experienced increased physician supply of 3.3% three years after adoption, with greater gains occurring for some "high-risk" specialties, such as emergency medicine and anesthesiology.³ Another study of county-level data from 1985-2000 found that counties in states with a cap on non-economic damages had 2.2% more physicians per capita, and rural counties in states with a cap had 3.2% more physicians per capita. Rural counties in states with a \$250,000 cap had 5.4% more obstetrician-gynecologists and 5.5% more surgical specialists per capita than did rural counties in states with a cap above \$250,000.⁴

¹ *Medical Malpractice: Implications of Rising Premiums on Access to Health Care*. Washington, DC: US General Accounting Office; 2003. Report GAO-03-836, p. 31

² Thorpe KE. *The medical malpractice 'crisis': recent trends and the impact of state tort reforms*. Health Affairs (Millwood). January-June (suppl Web exclusives), 2004;W4-20-30. Available at: <http://content.healthaffairs.org/cgi/reprint/hlthaff.w4.20v1>.

³ Daniel P. Kessler, PhD, JD; William M. Sage, MD, JD; David J. Becker, BA, *Impact of Malpractice Reforms on the Supply of Physician Services*, Journal of the American Medical Association, June 1, 2005—Vol 293, No. 21, p. 2623

⁴ William E. Encinosa and Fred J. Hellinger, *Have State Caps On Malpractice Awards Increased The Supply Of Physicians?*, Health Affairs, no. (2005): doi: 10.1377/hlthaff.w5.250

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Reduced cost of care – Laws limiting malpractice awards may also reduce the cost of “defensive medicine,” physicians ordering more tests than necessary, or avoiding high-risk patients/procedures, to protect against costly malpractice claims. Defensive medicine is difficult to evaluate because it is difficult to identify and measure. However, some studies have suggested a reduced cost of health care in states that cap damages. For example, one analysis of state health care expenditures indicated that spending per resident is 3-4% lower in states that cap non-economic damages, versus states that don't place limits on these damages.⁵ Another study found that health care expenditures for Medicare patients with acute myocardial infarction and ischemic heart disease were 5.3% lower and 9% lower, respectively, in states with laws directly limiting damage payments, without significant differences in outcomes for patients.⁶

Reduced attorney's fees – A study of medical malpractice verdicts from 1995 to 1999 by the Rand Corporation⁷ indicates that MICRA resulted in a 60% reduction overall of attorney fees in medical malpractice cases studied. This helps to ensure that more of the award goes to plaintiffs. Critics of MICRA assert that these reduced fees may have a negative impact on the ability of some plaintiffs with legitimate claims to get quality legal representation. However, at this time there does not appear to be evidence to support or refute this claim.

SUMMARY

We believe that MICRA, in particular its \$250,000 cap on non-economic damage awards, is beneficial in preserving access to care for patients.

Please contact me if you have questions or need any further assistance in this matter.

MHK:ws

c: Chief Executive Office
County Counsel
Executive Office, Board of Supervisors

⁵ Fred J. Hellinger, PhD, and William E. Encinosa, PhD, *The Impact of State Laws Limiting Malpractice Damage Awards on Health Care Expenditures*, American Journal of Public Health, August 2006, Vol 96, No. 8, p. 1379

⁶ Kessler DP, McClellan MB. *Do doctors practice defensive medicine?* National Bureau of Economic Research Working Paper Series, pp. 24-27.

⁷ Nicholas M. Pace, Daniela Golinelli, Laura Zakaras, *Capping Non-Economic Awards in Medical Malpractice Trials: California Jury Verdicts Under MICRA*, Rand Institute for Civil Justice, 2004, p.37